

The Gazette of India

EXTRAORDINARY

PART I—Section 1

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No. 437] NEW DELHI, THURSDAY, OCTOBER 23, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 23rd October, 1952

No. 19/73/52-Elec.III.—WHEREAS the election of Shri Popatlal Mulshanker Joshi of Brahman Vas, Outside Delhi Gate, Palanpur, as a member of the Legislative Assembly of Bombay from the Decsa-Dhanera constituency of that Assembly has been called in question by two election petitions duly persented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kanaiyalal Bhabhutbhai Mehta of Gathamam Gate, Palanpur and Shri Kanaiyalal Durlabharam Bhansali of Pipala Sheri, Palanpur (North Gujarat), respectively;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of sections 86 and 87 of the said Act, for the trial of the said petitions, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the Election Petition filed by Shri Kanaiyalal Bhabhutbhai Mehta;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 73 OF 1952

Exb. No. 57.

Coram:

Shri B. C. Vakil, B.A.(Hons.), LL.B. ...

Chairman.

Shri T. P. Ghogale, B.A.(Hons.), LL.B. }

Members of the Election Tribunal.

Shri A. A. Adarkar, B.A. LL.B. }

In the matter of the Representation of the People Act, 1951.

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

and

Shri P. B. Patwari.—In the matter of the Election Petition presented thereunder by Shri Kanaiyalal Bhabhutbhai Mehta, residing at Gathamam Gate, Palanpur.

Petitioner.

Versus.

Shri M. C. Mehta, Shri M. R. Barot.—1. Satyendra Kalidas Zaveri, residing at Dayre, Palanpur.

Shri G. P. Vyas, Shri N. S. Kothari.—2. Kanaiyalal Durlabhram Bhansali, residing at Jiva Mehta's Chakala, Palanpur.

Shri C. T. Daru, Shri C. C. Bhatt.—3. Popatlal Mulshanker Joshi, residing near Victoria Library at Palanpur.

Shri N. C. Shah.—4. Natverlal Manilal Desai, residing near Jain Upashraya, Palanpur.

Respondents.

This is an election Petition filed by Shri Kanaiyalal Bhabhutbhai whose nomination paper filed on 22nd November, 1951 was rejected by the Returning Officer on 29th November, 1951, to get the election declared wholly void on the ground that the result of the election had been materially affected by the improper rejection of his nomination.

2. The petitioner as well as the four respondents were candidates for a seat in the Bombay Legislative Assembly from the Deesa Dhanera Constituency. The petitioner's nomination paper Ex. 46, dated 21st November, 1951 was filed on 22nd November, 1951. Respondent No. 3 and one Manubhai Fojalal Kothari on behalf of respondent No. 1 raised objections to the petitioner's nomination. The Returning Officer accepted the objection that the petitioner was disqualified under Section 7(d) of the Representation of the People Act and rejected his nomination. The petitioner has filed this petition contending that the order of the Returning Officer was wrong. All the respondents were duly served and were represented by pleaders at the hearing. Certain documents were got produced from the Returning Officer and Collector, Banaskantha and from the Civil Surgeon, Banaskantha. Parties filed purshis Ex. 28 stating that they did not wish to lead any evidence. The learned pleaders representing the parties addressed the Tribunal on 3rd October, 1952 and 4th October, 1952 on the following points raised for determination by the Tribunal:—

- (1) Whether there was a contract within the meaning of Section 7(d) of the Representation of the People Act, in which the petitioner had any share or interest whether by himself or by any person or body of persons in trust for him or for his benefit or on his account?
- (2) Whether the rejection of the nomination paper was improper and has materially affected the result of the election?

The findings of the Tribunal are:—

- (1) Yes.
- (2) No, for the following reasons:—

Reasons

3. The contentions of Shri Patwari, the learned pleader for the petitioner, were that there was in the first place no completed contract entered into by the petitioner or his firm with regard to printing work with any Government officer. Shri Patwari contended that what the Sadguru Mudranalaya, in which the petitioner was a partner, did was to send quotations. These quotations were in the nature of invitations for offers. When offers were received from the Civil Surgeon, Banaskantha, the Collector, Banaskantha or the Secretary, Rural Development Board, Banaskantha in response to these invitations there could still be no contract till the press either replied that it accepted the offer or is shown to have accepted the offer by performance. Out of the four transactions relied upon by respondent No. 3, Shri Patwari urged that the one for printing 3000 copies of village forms, Ex. 47, was executed and all the 3000 forms were delivered in the office of the District Rural Development Board, Banaskantha at Palanpur on 20th November, 1951 and only payment remained to be made which would not result in petitioner's disqualification. If there existed any transactions on 22nd November 1951 which amounted to a contract, Shri Patwari urged that there was no contract for supply of goods. Shri Patwari urged that the word "supply" suggested continuity and not a mere casual transaction. He also urged that a contract of printing work was not to supply goods but was one for work, labour and skill, the furnishing of material being only ancillary. Shri Patwari further urged that the doing of printing work could not amount in law to a contract for execution of any works or for the performance of any service. Lastly, Shri Patwari contended that there was no contract for any supply to the appropriate Government. Shri Patwari particularly emphasized the words "undertaken by the appropriate Government" which qualified "the execution of works or the performance of service".

4. Respondent No. 3 has relied on 4 printing transactions by the Sadguru Mudranalaya, one with the Civil Surgeon, Banaskantha; one with the Collector, Banaskantha and two with the Secretary of the District Rural Development Board, Banaskantha, hereafter referred to as the D. R. O. Board. The Tribunal will now deal with them one by one to find whether they amount to contracts or not. Exs. 26, 27, 28, 40 and 50 will have to be examined in connection with the contract of printing alleged to have been contracted with the Civil Surgeon, Banaskantha. Ex. 26, dated 15th May, 1951 is the letter addressed by Shri Sadguru Mudranalaya,

in which the petitioner is admittedly a partner, to the Civil Surgeon, Banaskantha. Shri Navin P. Mehta, the partner of the petitioner, states in Ex. 26 that he submitted it as per the demand for the tender for printing. The sample of the paper on which the printing work was to be done was also stated to be accompanying the letter. By Ex. 27 dated 24th May 1951 the Civil Surgeon, Banaskantha, accepts the terms and rates stated in Ex. 26 and requests that six books be supplied immediately. Ex. 28 is another letter dated 21st September 1951 from the Sadguru Mudranalaya wherein specified rates are submitted as per the demand for the tender of printing. Ex. 48 dated 5th October 1951, which is the same as Ex. 29, is the letter of acceptance by the Civil Surgeon. Ex. 48 ends with the request "Please supply the books immediately and submit your bill for payment." Exs. 26 and 27 have been produced to meet the petitioner's contention that the transactions were mere casual transactions. The transaction contained in Exs. 28 and 29 is the transaction relied upon by respondent No. 3 to show that there was a subsisting contract for supply of goods or for doing printing work on 22nd November 1951. It is contended by Shri Patwari that by Ex. 28 the Sadguru Mudranalaya sent mere quotations which constituted only an invitation for an offer and was not by itself an offer and Ex. 48 was an offer from the Civil Surgeon which could become a contract either by the acceptance from the press or by performance by conduct on the part of the latter. Shri Patwari urged that we do not know what transpired after 5th October 1951 and unless respondent No. 3

ed that the Sadguru Mudranalaya either wrote back accepting the offer accepted the offer by performance there was no contract in law. Shriram yandas, 34 Bom. L.R. 236, at 248, the Firm of Shri Patwari relied upon Devidatt Ramniranjandas vs. Durga Parshad Mussaddi Lal v. The firm 'Rulla Mal Doogar Mal, A.I.R. 1922 Lah. 100; Thanawala, F.B. V. Shahzada Basudeo Singh, 1 I.C. 325; Handandass vs. Mohori Bibi, 8 I.C. 602 and State Aided Bank of Travancore, Ltd. vs. Dhrit Ram, A.I.R. 1942 Privy Council, page 6 in support of his contentions. After having gone through these decisions, the tribunal finds that none of the decisions applied to the facts of this case. In A.I.R. 1922 Lahore 100 the plaintiff from Ludhiana asked the defendants at Gonda for quotations and terms and the defendants by post-card sent those terms and asked the plaintiffs to wire if they wanted goods, and the plaintiffs did so. The post-card was construed to be merely an invitation for an offer in the same way as a catalogue of goods sent out by any shop of business firm as was the case in 1 I.C. 825. In 8 I.C. 601 in answer to a telegram from a broker "Have likely purchaser your three properties. Telegraph lowest price for each." the owner replied stating his lowest price for each property and the broker accepted earnest money for one property and wired back informing the owner of the receipt thereof. It was held "A statement of the lowest price made in answer to an enquiry as to the lowest price for each was not an offer but only evidence of a willingness to treat". Similarly, in the Bombay case the plaintiffs wrote a letter to the defendants stating the terms of business to the defendants at Gazlabad and the defendants sent instructions for business thereafter to the plaintiffs which were accepted by the plaintiffs in Bombay. It was held that when a merchant or commission agent sends his quotations or terms of business to other people it is merely an intimation on his part of his readiness to transact business with them on those terms and that merely the passing of letters between the parties a contract as such did not come into existence between the parties. It is to bring his

se within the purview of this decision that the petitioner is styling the contents Ex. 28 as quotations. It is obvious that when a person generally states his terms of business or sends a catalogue or quotations in general he cannot be said to be making any specific proposal or offer which can culminate into a contract by acceptance. In the present case, however, as shown by Ex. 28, Ex. 28 was sent in pursuance of the demand for the printing of receipts books. When tenders were asked for they were asked for a specific purpose and Ex. 28 does not make any general quotation but makes a specific offer in answer to the demand for the tender of the printing of receipt books. Even the sample of the paper to be used is enclosed with Ex. 28. The rates are quoted with reference to the number of books, the pages to be included in each book and with the particulars that 200 receipts in duplicate with numbering, binding, papers etc. were to be supplied. A separate rate is quoted for 10 books. This cannot be put on a par with sending a catalogue stating general terms of business or sending quotations in general. The Privy Council case is also clearly distinguished. In that case bank's letter with quotations was held to be not an offer but only a quotation of business terms and the contract was held to be made by the offer by the party in the opening form accepted by the bank by the issue of the deposit receipt. In the opinion of the Tribunal Ex. 28 constitutes an offer which is clearly accepted by Ex. 29. Shri Patwari's contention that a further acceptance was necessary from the Press is untenable and is belied by the statement on oath, Ex. 50, of Shri Navinbhai Popathbhai Mehta, a partner of the firm, before

the Returning Officer. In Ex. 50 Shri Mehta has stated that when the rates quoted by the Press in answer to the tenders are accepted by Government offices, the Press immediately begins to work and does not give any reply. Shri Patwari failed to show any instance in which the Press wrote a separate letter of acceptance. Again, before the Returning Officer the petitioner adopted the stand that this contract was cancelled prior to 21st November 1951 by a letter dated 19th November 1951 written by Shri Mehta and delivered in the Civil Surgeon's office. The Returning Officer, in the enquiry made by him, disbelieved this plea of cancellation of the contract and the petitioner has wisely not pressed the contention that the contract with the Civil Surgeon was cancelled before the date of the nomination. The very allegation of cancellation implied the completion of the contract and before the Returning Officer the petitioner had thus admitted the completion of the contract. When he now finds that his plea of cancellation is unsustainable he turns round from the stand taken before the Returning Officer. It is very good for the Petitioner to say "we do not know what happened after 21st September 1951". It was a matter within the special knowledge of the petitioner and not of respondent No. 3 and if the contract was not executed at all or it lapsed in any manner the petitioner could have adduced evidence to prove the fact. He cannot succeed by seeking to cast the burden of proof on respondent No. 3 which clearly lies on him. The contract contained in Exs. 28 and 29 was such as would come within the scope of Section 7(d) of the Representation of the People Act if the other conditions were fulfilled.

5. Exs. 33, 34, 35, 36, 51 and 31 have to be referred to with regard to the alleged contract of printing between the Collector, Banaskantha and the Sadguru Mudranalaya. By Ex. 33 dated 27th October 1951 Sadguru Mudranalaya was informed that 2,600 copies of R.D.C. forms 5 and 8,000 copies of consumers' permit were required to be published in Hindi for the Abu Road taluka and the Press was requested to send a tender in a closed packet. By Ex. 34 dated 6th November 1951, which is the same as Ex. 51, the Sadguru Mudranalaya quoted the rates with regard to these specific items and also stated that it enclosed the sample of paper to be used. By Ex. 31 dated 15th November 1951 the Press was informed on behalf of the Collector that the sample alleged to have accompanied Ex. 34 was not received in the office. 22nd November 1951 was the date of the nomination. Ex. 35 is the bill for Rs. 63 dated 18th April 1952 submitted by the Sadguru Mudranalaya with regard to the very 8,000 copies of Avedan Patra and very 2,600 copies of R.D.C. form No. 5. The rates are the same as those quoted in Ex. 34. Ex. 36 shows that this item of Rs. 63 was paid on 14th May 1952 to Shri Sadguru Mudranalaya. The general contention of Shri Patwari that Ex. 34 was merely quotations and offer for an invitation for an offer fails in view of the reasons stated in connection with the discussion of Exs. 28 and 29. Exs. 33 and 34 read with Ex. 35 show that the offer which was given on 6th November 1951 by Ex. 34 was accepted by the Collector as Civil Supply Officer, that he had received the bill in this connection on 18th April 1952 and he had paid the amount on 14th May 1952. It was urged by Shri Patwari that respondent No. 3 had failed to prove that the acceptance was on some date prior to 22nd November 1951 and that Exs. 35 and 36 might relate to some other printing transaction concerned with the same number of Avedan Patra and R.D.C. forms printed at the same rate. He contended that it was for respondent No. 3 to prove that. Respondent No. 3 did summon the Collector with the whole file of papers connected with these printing transactions and he had also received Ex. 45 stating that no such papers received or dispatched during the time were forthcoming from the papers available on the record in the office. He had, therefore, done all that he could do and it was for the petitioner, in whose special knowledge it was as to when the offer was accepted, to prove the date. In Ex. 35 the Press deliberately kept the order number blank. If the number of the order contained in Ex. 33 had been mentioned in Ex. 35 that would have clearly indicated that the contract was subsisting on 22nd November 1951 and therefore the number of the order was not stated on 18th April 1951 as the dispute had already arisen on that date. If Exs. 35 and 36 related to another contract altogether which had come into existence after the date of the nomination, nothing prevented the petitioner from proving that new order. Considering the evidence before the Tribunal in the light of facts and circumstances of the case, the Tribunal holds that the contract pertaining to the printing of 2,600 R.D.C. Form No. 5 and 8,000 consumers' permit in Hindi with the Collector of Banaskantha was subsisting on the date of the nomination.

6. With regard to the two other contracts alleged to have been entered into with the Secretary D.R.D. Board, Banaskantha, the Tribunal considers it unnecessary to consider the question as the respondent No. 3 has not led any evidence to show that supplying printed bill books to the D.R.D. Board, Banaskantha, would amount to a supply to the appropriate Government. No evidence

is led to show that the D.R.D. Board is a Government concern, that the D.R.D. Board's secretary is a Government officer and the secretary of the D.R.D. Board is not one of the persons included in Government Resolution, Home Department, No. 1758/6 dated 26th January 1950 published in the *Bombay Government Gazette* of January, 26, 1950. The Tribunal, therefore, considers it unnecessary to consider whether those two transactions were completed contracts or contained an invitation for an offer and an offer which had not culminated into a contract. At any rate, therefore, there was one contract by the Sadguru Mudranalaya for printing 10 books each containing 75 pages of 200 receipts in duplicate with numbering, binding, papers etc. with the Civil Surgeon and the other of printing 2,600 copies of R.D.C. Form No. 5 and 8,000 copies of consumers' permit for the Collector, Banaskantha.

7. The next contention of Shri Patwari was that even if there was any contract it was a mere casual contract and not a course of dealings as suggested by the word "supply". According to Shri Patwari the word "supply" did not connote a casual or isolated contract but indicated a course of dealings. Shri Patwari urged that the very word "supply" implied that construction. The Tribunal is unable to accept Shri Patwari's contention. The dictionary meaning of "supply" as given in the Oxford Dictionary is to furnish or provide and does not imply any continuity. Again, our Constitution has been framed after considering the constitutions of different countries and selecting what was the best suited for our purpose. The language adopted, therefore, is the test of what is intended Section 7(d) advisedly uses the word "a contract" and it is immaterial whether the contract is to be completed by a single supply or more than one supply. Again, it is not necessary, as Shri Patwari tried to contend, that there should be a course of more than one contract. The word singular may include the plural but cannot exclude the singular. If Shri Patwari's contention were to be accepted a person who enters into a very substantial contract with the Government might avoid disqualification and a person who enters into ten petty contracts with the Government would be disqualified. This certainly does not stand to reason.

8. The next contention of Shri Patwari is that the contract should be shown to be a contract for the supply of goods to appropriate Government or a contract for the execution of any works undertaken by the appropriate Government or a contract for the performance of any services undertaken by the appropriate Government. Leaving aside for the moment "the appropriate Government" it must first be shown that the contract was either for the supply of goods or for the execution of any works or for the performance of any services undertaken. Shri Patwari pointed out that the word "works" as mentioned in the Law Lexicon of British India by Atiyar, 1950 edition at page 1338 had reference to something like drainage work; irrigation work; private salt work; special salt work; water works, etc. and that the word "works" referred to something big and large and not a mere printing of a few books. Shri Daru when asked by the Tribunal did not specifically give up his case under the word "works" but stated that his main case was that the contract was for the supply of goods to the appropriate Government. Shri Daru, however, made no serious effort to show that the printing work done amounted to the execution of any works or the performance of any services. It was further not shown that any such works or services were undertaken by the Government of the State of Bombay. Respondent No. 3 would succeed only if the Tribunal is satisfied that the printing work done by the Sadguru Mudranalaya amounted to a contract for the supply of goods to the appropriate Government.

9. Shri Patwari contended that if any of the contract was held proved it was a contract for work and labour or for work and labour plus material and the supply of material was only ancillary or incidental to the main purpose of printing and the contract could not be called a contract for the supply of goods at all. His main contention amounts to this that the receipt books printed for the Civil Surgeon and the consumers' permit and the R.D.C. form No. 5 printed for the Collector Banaskantha could not be said to be goods but it was a contract for doing printing work on paper which was incidentally provided by the Press. Shri Patwari chiefly relied on *Clay v. Yates*, 1 H. & N. 73, S. C. 25 L. J. Ex. 237 and *Robinson v. Graves*, 1 K.B. 579. In *Clay v. Yates* the printer had verbally agreed to print for the defendant 500 copies of a treatise to which a dedication was to be prefixed, at a certain price per sheet, including paper. The customer provided the manuscript for the book and at a later date the dedication. The book was printed but the printer refused to print the dedication which he considered to be libellous. It was held to be a contract for work and labour and material and not a contract for the sale of goods. In *Lee v. Griffin*, 1 B.&S. 275; 30 L.J.Q.B. 252, a lady had ordered out a denture from the surgeon dentist and she died before taking delivery. When the dentist sued the heirs of the lady it was held that the contract was a contract not for work and labour but a contract for goods sold and delivered. *Clay v. Yates* was considered

in this case and it was distinguished by observing that *Clay v. Yates* was not a case in which a party ordered a chattel of another which was afterwards to be made and delivered but a case in which the subject-matter of the contract was the exercise of skill and labour. It was observed that if the contract be such that, when carried out, it would result in the sale of a chattel, the party cannot sue for work and labour. Both these cases were considered in the case of *Robinson v. Graves*, (1935) I.K.B. 579, relied upon by Shri Patwari. In that case the defendant orally commissioned the plaintiff, an artist, to paint the portrait of a lady and promised to pay 250 guineas therefor. The defendant subsequently repudiated the contract before the portrait was completed. The plaintiff filed an action for the agreed price of the portrait and it was held that it was a contract for work and labour and not for the sale of goods as the substance of the contract was that skill and labour should be exercised upon the production of the portrait, and that it was only ancillary to that contract that there would pass from the artist to his customer some materials. Shri Patwari also relied upon the observations of Justice Crompton cited in *Robinson v. Graves* at pages 590-91 "I do not agree with the proposition, that whenever skill is to be exercised in carrying out the contract, that fact makes it a contract for work and labour, and not for the sale of a chattel; it may be the cause of action is for work and labour, when the materials supplied are merely ancillary, as in the case put of an attorney or printer. In both *Lee v. Griffin* as well as *Robinson v. Graves* the references to a printer are merely obiter but it was urged that these *obiter dicta* from Judges of great eminence assume great weight in our consideration. Considering the observations in all these cases, it appears to us that whether a contract is one for work and skill or for work and labour and material or a contract for the supply of goods depends on the particular facts of each case and no general rule to cover all the cases may be cited. The mere fact that some skill is used is not conclusive of the fact that the contract is not for the supply of goods. Whether the price of the material exceeds the remuneration for work and skill is also not a conclusive test. Whether the materials are or are not supplied by the customer is also not the conclusive test. Each case would be governed by the circumstances of that particular case and the Tribunal would have to examine the essence of each contract and to find out what the essence is. Again, though these English cases would afford considerable guidance to the Tribunal, the Tribunal will have to consider the language of Section 7(d) of the Representation of the People Act and the definition of the word "goods" as given in the Sales of Goods Act. The Tribunal will have to consider the special circumstances of this case and to consider what the Civil Surgeon, Banaskantha and the Collector, Banaskantha, required and what the Sadguru Mudranalaya accepted to supply.

10. Turning first to the facts of this case, the Civil Surgeon wanted to get published some books containing printed forms of receipts in duplicate along with papers for such books. Ex. 28 shows that the price quoted for such six books is at the rate of Rs. 11 and Rs. 14 for ten books. The sample of the paper to be used was enclosed with Ex. 28. The Sadguru Mudranalaya supplied rates in reply to tenders that were asked for. It is not shown that the Sadguru Mudranalaya was selected either by the Civil Surgeon or by the Collector on account of its skill in printing or the excellence of its types or any special efficiency in printing work. Tenders were invited and the persons whose quotations were found most reasonable was given the printing work. That would show that it was the reasonableness of the rates and not any skill or efficiency in printing or any excellence of materials of printing that actuated the Civil Surgeon or the Collector in making the contract with the Sadguru Mudranalaya. It would, therefore, appear that neither skill nor work and labour or printing formed the essence of the contract. The only quality that came to be examined by the officers was the quality of the paper, as the sample of paper was enclosed with Ex. 28 and was also said to have been enclosed with Ex. 34. Therefore, the quality of the paper that was to be used for printing the books was considered by the officers concerned. Nothing proceeded from the Civil Surgeon or the Collector as the manuscript of the book and the draft of the dedication were to proceed from the customer in *Clay v. Yates*. In *Clay v. Yates* the customer approached the printer for the printing of a whole book, the manuscript of which he supplied to the printer, and he also supplied the draft of the dedication. The printer supplied the material. Obviously the book could not be said to be a chattel sold by the printer to the customer as the most substantial contents, that is, the contents of the book and the dedication were to be supplied by the customer himself. What the printer, who was approached by the customer, did was to use his work and labour on the paper which he incidentally supplied. When a book is to be published, the author is naturally keen for an elegant get-up and nice printing. There is nothing in evidence to show that either the Civil Surgeon or the Collector was looking for any such work or skill or excellence of printing from the Sadguru Mudranalaya. All that they exercised their mind upon was the quality of the paper that was supplied and the rates which were offered and it

would be difficult to say that either skill or work or labour formed the essence of the contract. The case of *Lee v. Griffin*, 1 B.&S. 275; 30 L.J.Q.B. 252, in which the denture was ordered from a dentist surgeon, was a stronger case than the present case and it was still held to be a contract for the sale of chattel. Undoubtedly, the preparation of a denture which would fit the mouth of the patient and which she could have used with comfort did require greater skill than could be required from Sadguru Mudranalaya in printing the receipt books. The tailoring of a suit which elegantly fits the customer also requires skill and efficiency of work. It was held in *Lee v. Griffin* that the contract was to deliver a thing which when completed would have resulted in the sale of a chattel, and in the opinion of the Tribunal the completion of the receipt books and the printing of the forms would result into moveable property capable of being sold and delivered. The definition of "goods" given in Section 2 of the Sale of Goods Act is comprehensive as it means every kind of moveable property other than actionable claims and money. In our opinion the present case is clearly distinguishable from the case of *Clay v. Yates* and the *obiter dicta* in other cases when they referred to some printing work which would be the subject-matter of some skill or work and labour and not the printing work like the one in question which is given from the sole criterion of reasonableness of price and not from the criterion of any skill or work involved in printing it. In the opinion of the Tribunal, therefore, the contracts do amount to contracts for the supply of goods.

11. The last contention of Shri Patwari which remains to be considered is whether there was a contract of goods to the appropriate Government. Shri Patwari contended that a contract was not a contract for the supply of goods to the appropriate Government because it was entered into with a Government servant like the Civil Surgeon or a Collector. He urged that Article 299 of the Constitution of India provides how contracts made in the exercise of the executive power of the Union or of a State can be made. He urged that Article 299 requires that they shall be expressed to be made by the President, or by the Governor or the Rajpramukh of the State, as the case may be, and they should be executed on behalf of the President or the Governor or the Rajpramukh by such persons and in such manner as he may direct or authorise. In the present case Shri Patwari contended that it was not shown that these contracts are expressed to be made by the Governor and that they are executed by the Civil Surgeon or the Collector in exercise of such power. In reply to this Shri Daru for respondent No. 3 invited our attention to the Government Resolution, Home Department, No. 1758/6 dated 26th January 1950, published in the Bombay Government Gazette of 26th January 1950 at page 456. It states that in exercise of the powers conferred by clause 1 of article 299 of the Constitution of India and of all other powers enabling him in this behalf, the Governor of Bombay was pleased to direct that the classes of contracts and assurances of property mentioned therein could be made in the exercise of the executive authority of the State of Bombay, as stated therein. The second item shows that contracts for the supply of articles or petty supplies could be executed by the Government Officer for whose use such petty supplies are required or by any Government Officer to whom such officer is subordinate. In the opinion of the Tribunal the supplies in question are obviously petty supplies which cost a small amount and they were certainly meant for the use of these Officers. The Tribunal is satisfied that the Collector and the Civil Surgeon had authority to make a contract in connection with these petty supplies.

12. The last contention of Shri Patwari was that even if the Collector and the Civil Surgeon had authority to enter into these contracts, they cannot be binding contracts unless they were expressed to be made by the Governor of the State or on his behalf. It is true that Article 299 requires that all contracts made in the exercise of the executive power of the Union or the State shall be expressed to be made by the President, or by the Governor or the Rajpramukh of the State as the case may be. The provision is similar to the provision of Schedule IX, Section 40 of the Government of India Act, which provided as under:—

"All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a Secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council."

This provision came for construction before the Federal Court in *J. K. Gas Plant Manufacturing Co. vs. Emperor*, in A.I.R. 1947 Federal Court 38, and the Federal Court held that the provision was not mandatory. The substance of the provision

is the entering into the contract by some authorized person and whether the contracts is to be so expressed or not is a more a matter of form than of substance. As stated in that case, "no one can possibly doubt the immense general inconvenience and injustice which would be caused to innocent persons" if the petitioner's construction of Article 299 was to be held justified. The petitioner may, in his own self interest, choose to call the provision to be mandatory but it would cause hardship and general inconvenience to innocent persons if a mandatory construction is put on the provision of this requirement. Again, it was pointed by Shri Daru that what Section 7(d) requires is not that the contract for the supply of goods should be executed by the appropriate Government but that the supply of goods for which the contract is entered into should be shown to be to the appropriate Government. According to Shri Daru, if there is a contract for the supply of goods to the appropriate Government and the petitioner has any share or interest in such contract, it is immaterial as to whether the petitioner has entered into the contract or whether the Governor or the person authorized under Article 299 has entered into the contract. It is unnecessary to enter into this discussion as in the present case the contract is a contract for the supply of goods to the appropriate Government entered by the Civil Surgeon and the Collector who are empowered by the Government notification to enter into such contracts and the mere fact that the contracts are not so expressed would not invalidate the contracts, the provision being directory.

13. The result, therefore, is that there were two contracts for the supply of goods to the appropriate Government in which the petitioner had a share or interest and the petitioner is under Section 7(d) of the Representation of the People Act, 1951, disqualified for membership of the State Legislature. The Returning Officer was, therefore, right in rejecting his nomination paper. This petition should, therefore, be dismissed.

14. So far as the costs of and incidental to the petition are concerned, the Tribunal is of opinion that the petitioner should bear his own costs and pay Rs. 100 as costs of and incidental to the petition to really contending respondent No. 3. All other respondents should bear their own costs.

ORDER

The petition is dismissed. The petitioner should bear his own costs of and incidental to the petition and should pay Rs. 100 to respondent No. 3 as his costs of and incidental to the petition. All other respondents should bear their own costs.

14th October, 1952.

(Sd.) B. C. VAKIL.

(Sd.) T. P. GHOGALE.

(Sd.) A. A. ADARKAR.

P. S. SUBRAMANIAN,
Officer on Special Duty